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Patent
236/092

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Michael J. Heller et al.

Serial No.: 09/128,718

Filed: August 4, 1998

For: SELF-ADDRESSABLE SELF-ASSEMBLING
MICROELECTRONIC SYSTEMS AND DEVICES
FOR MOLECULAR BIOLOGICAL ANALYSIS AND
DIAGNOSTICS

)
) Group Art Unit: 1655

)
) Examiner: Marschel

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**PETITION TO WITHDRAW HOLDING OF ABANDONMENT
BASED ON FAILURE TO RECEIVE OFFICE ACTION**

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Applicants hereby petition to the Commissioner under 37 CFR §1.181 that the notice of abandonment mailed on June 9, 1999 be withdrawn given that Applicants never received the underlying Office Action. In the event that the Petition Under 37 CFR §1.181 is not granted, Applicants hereby petition under 37 CFR §1.137 for revival of the application.

As set forth in the Manual of Patent Examining Procedures, Section 711.03(c)(II), Applicants will make the required showing regarding non-receipt of the Office Action. The facts, as understood by the undersigned who is the attorney responsible for prosecution of this matter, are as follows:

OC-29261.1

CERTIFICATE OF MAILING
(37 C.F.R. §1.8a)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as First Class Mail in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

June 25, 1999
Date of Deposit

Denise N. Doss

Name of Person Mailing Paper

Signature of Person Mailing Paper

1. On June 4, 1999, I received a voice mail from Examiner Marschel, the examiner handling the instant application. He indicated that a response had not been received to his previously sent *Ex Parte Quayle* action, and inquired whether one had been filed. I obtained the original file, and found that no such communication was in the file. I returned the call to Examiner Marschel, and indicated that we had no such action in our files. He suggested that we petition to revive the application by providing evidence regarding the firm's docketing system. (See the contemporaneous Memo of June 8, 1999, of David B. Murphy to the File, attached hereto as Exhibit A).

2. On or around June 11, 1999, the U.S. Prosecution Department of Lyon & Lyon received the Notice of Abandonment mailed by the office on June 9, 1999. The Notice of Abandonment arrived within two days of its mailing. The Notice of Abandonment identifies the date of the previous office letter as being mailed on October 14, 1998.

3. The mailing address for correspondence in this application is the Los Angeles office of Lyon & Lyon. Attached hereto as Exhibit B are the U.S. Prosecution Department mail lists starting on October 15, 1998. These records have been searched in two ways to confirm that our records show that the Office Action in this case was never received by our firm. First, the mail list for approximately one month from October 15, 1998 was reviewed. Secondly, an electronic search of the computer records for this docket was searched. In each case, there was no indication that the Office Action was received.

4. A copy of the file jacket on which the receipt information regarding the communication would have been recorded is attached hereto as Exhibit C. No entry has been made, further confirming the conclusion that the Office Action was never received.

Applicants respectfully request that the holding of abandonment be withdrawn, and that the Office Action dated October 14, 1998 be remailed.

In the event that this request must be considered under 37 CFR §1.137, Applicants state that the entire delay in filing the required reply from the due date for the reply until the filing of this Petition was unavoidable (37 CFR §1.137(a)(C)) and unintentional (37 CFR §1.137(b)(C)). The required reply cannot be provided since the undersigned has never received the underlying Office Action. Should a fee be due, Applicants authorize such charge to be made to Deposit Account No. 12-2475.

Should any questions arise regarding this Petition, Applicant would request that the undersigned be contacted at (714) 751-6606.

Accordingly, Applicants respectfully request that the Notice of Abandonment mailed June 9, 1999 be withdrawn for failure to ever receive the underlying Office Action, and that the Office Action of October 14, 1998 be remailed.

Respectfully submitted,

LYON & LYON LLP

Dated: June 25, 1999

By:



David B. Murphy
Reg. No. 31,125

DBM/dnd
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Los Angeles, California 90071-2066
(714) 751-6606 or (213) 489-1600



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

DATE : _____
TO : TC 1655
VIA : _____
FROM : _____
SERIAL NO : _____

- Please
act on
petition
to WLD
Abn.

<input type="checkbox"/>	<p>Please consider Paper No. _____ to see if the proposed response would place this application in condition for allowance in the event it is revived.</p> <p><u>If the response would place the application in condition for allowance, write in the margin of the response "Ok to enter upon revival."</u></p> <p><u>If the response would not place the application in condition for allowance, complete Form PTOL-303, but do not mail the form to the applicant.</u></p> <p><u>PLEASE HAND CARRY THE FILE TO FOUR CRYSTAL PLAZA, SUITE 3C23 WITHIN ONE WEEK OF THE ABOVE DATE.</u></p>
<input checked="" type="checkbox"/>	<p><u>Filed 6-28-99</u></p> <p>Please consider Paper No. _____ as a Petition to Withdraw the Holding of Abandonment in view of the statements presented by petitioner that a response was timely filed. If the request is granted, the petition fee should be refunded to petitioner. If the request is not granted, please forward the application to the Office of Petitions, Crystal Plaza Four, Suite 3C23 for consideration of the alternative Petition to Revive.</p>

the office action
was never rec'd.

Frances Healy
Petitions Attorney Ex'r
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects